(2)

No. 88-116

FILED
AUG 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JONATHAN STERN,

Petitioner,

— against —

LEUCADIA NATIONAL CORPORATION, LNC INVESTMENTS, INC., CHARTER NATIONAL LIFE INSURANCE COMPANY, AMERICAN INVESTMENT COMPANY, LEUCADIA INC., UINTAH NATIONAL CORP., TLC ASSOCIATES, CARL MARKS & CO., INC., IAN N. CUMMING, JOSEPH S. STEINBERG, CUMBERG, INC., MARKS INVESTING CORP. and S & S SECURITIES, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

DENNIS J. BLOCK
WEIL, GOTSHAL & MANGES
Attorneys for Respondents
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

QUESTIONS PRESENTED

1. Whether a complaint meets the requirements of Rule 9(b) that "the circumstances constituting fraud or mistake shall be stated with particularity" where (1) the allegations of fraud are made entirely on information and belief; (2) the allegations contain no statement of facts supporting the basis upon which the belief is founded; and (3) the complaint sets forth neutral facts that the defendants made certain statements and then simply concludes that the statements were false?

2. Whether the United States Supreme Court should function as a court of appeals in the context of reversing the decisions of two lower courts dismissing a complaint based upon failure to comply with basic pleading requirements of the Federal Rules of Civil Procedure utilizing a standard upon which there is no conflict among the circuits?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	v
OPINIONS BELOW	2
STATUTE INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	7
The decision below correctly applied rule 9(b) and is consistent with courts in other circuits	7
CONCLUSION	12
APPENDIX	13

TABLE OF AUTHORITIES

Cases:	Page
Arpet, Ltd. v. *Homans*, 390 F. Supp. 908 (W.D. Pa. 1975)	9
Blue Chip Stamps v. *Manor Drug Stores*, 421 U.S. 723 (1975)	9, 12
Decker v. *Massey-Ferguson, Ltd.*, 681 F.2d 111 (2d Cir. 1982)	8, 12
Denny v. *Barber*, 576 F.2d 465 (2d Cir. 1978)	9, 10
DiVittorio v. *Equidyne Extractive Industries, Inc.*, 822 F.2d 1242 (2d Cir. 1987)	9
Duane v. *Altenburg*, 297 F.2d 515 (7th Cir. 1962)	8, 9, 11
Elster v. *Alexander*, 75 F.R.D. 458 (N.D. Ga. 1977)	9
Friedlander v. *Nims*, 755 F.2d 810 (11th Cir. 1985)	9
Hayduk v. *Lanna*, 775 F.2d 441 (1st Cir. 1985)	9, 11
Kellman v. *ICS, Inc.*, 447 F.2d 1305 (6th Cir. 1971)	8
O'Neill v. *Maytag*, 339 F.2d 764 (2d Cir. 1964)	8
Robison v. *Caster*, 356 F.2d 924 (7th Cir. 1966)	8
Segal v. *Gordon*, 467 F.2d 602 (2d Cir. 1972)	8, 9
Semegen v. *Weidner*, 780 F.2d 727 (9th Cir. 1985)	8, 11
Shemtob v. *Shearson, Hammill & Co.*, 448 F.2d 442 (2d Cir. 1971)	8, 11

Page

Skycom Corp. v. *Telstar Corp.*, 813 F.2d 810 (7th Cir. 1987) 8

Stern v. *Leucadia National Corp.*, 844 F.2d 997 (2d Cir. 1988) 8

Walling v. *Beverly Enterprises*, 476 F.2d 393 (9th 1973) 11

Wayne Investment, Inc. v. *Gulf Oil Corp.*, 739 F.2d 11 (1st. Cir. 1984) 8, 9, 11

Wool v. *Tandem Computers, Inc.*, 818 F.2d 1433 (9th Cir. 1987) 9

Miscellaneous:

Fed. R. Civ. P. 9(b) ..... *passim*

Fed. R. Civ. P. 11 2

Fed. R. Civ. P. 12(b)(6) 2, 7

2A J. Moore & J. Lucas, Moore's Federal Practice ¶ 9.03[3] (2d ed. 1987) 9

5 C. Wright & A. Miller, Federal Practice and Procedure (1969) 8, 9

No. 88-116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JONATHAN STERN,

Petitioner,

– against –

LEUCADIA NATIONAL CORPORATION, LNC INVESTMENTS, INC., CHARTER NATIONAL LIFE INSURANCE COMPANY, AMERICAN INVESTMENT COMPANY, LEUCADIA INC., UINTAH NATIONAL CORP., TLC ASSOCIATES, CARL MARKS & CO., INC., IAN N. CUMMING, JOSEPH S. STEINBERG, CUMBERG, INC., MARKS INVESTING CORP. and S & S SECURITIES, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

Respondents* Leucadia National Corporation, LNC Investments, Inc., Charter National Life Insurance Company, American Investment Company, Leucadia Inc., Uintah National Corp., TLC Associates, Ian N. Cumming, Joseph S. Steinberg, Cumberg, Inc., Marks Investing Corp. and S&S

* This brief is submitted on behalf of all respondents except Carl Marks & Co., Inc. Pursuant to an Order dated April 16, 1987, the District Court approved a Settlement Agreement between plaintiff Stern and defendant Carl Marks & Co., Inc.

Securities, Inc. ("Respondents") submit this brief in opposition to the petition for certiorari filed by Jonathan Stern ("Petitioner") in this matter.

OPINIONS BELOW

The District Court for the Southern District of New York dismissed the complaint, with leave to be replead, pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted and pursuant to Fed. R. Civ. P. 9(b) for failure to plead fraud with the requisite particularity. The opinion of the District Court is reported at 644 F. Supp. 1108 (S.D.N.Y. 1986) and is Appendix A to the petition.

The District Court similarly dismissed the amended complaint and also awarded sanctions against Petitioner pursuant to Fed. R. Civ. P. 11. The amended complaint is Appendix B to the petition. The transcript of the oral opinion of the District Court dismissing the amended complaint "entirely on the original opinion" is Appendix C to the petition.

The Court of Appeals for the Second Circuit affirmed the decision of the District Court dismissing the amended complaint pursuant to Fed. R. Civ. P. 9(b), without deciding the District Court's dismissal pursuant to Fed. R. Civ. P. 12(b)(6), and reversed the award of sanctions. The opinion of the Court of Appeals is reported at 844 F.2d 997 (2d Cir. 1988), in Fed. Sec. L. Rep. (CCH) Current Vol., ¶ 93,717 (2d Cir. 1988), and is Appendix E to the petition.

STATUTE INVOLVED

The provision involved is Fed. R. Civ. P. 9(b). Its text is set out at Appendix F to the Petition.

STATEMENT OF THE CASE

Petitioner contends that Respondents made a substantial investment in GATX Corporation ("GATX") and then offered to acquire GATX in a cash merger – first at $38 per share and

then at $40 per share – with no intention of consummating the acquisition, but with the true prupose of inflating the market price of GATX stock so that either GATX itself or some other acquirer would purchase Respondents' stake in GATX. Petitioner further contends Respondents failed to disclose their true intentions in their filings with the Securities and Exchange Commission (the "SEC"), thus misleading persons who purchased GATX stock in anticipation that Respondents would consummate the acquisition of GATX. After the acquisition did not materialize, it is alleged, the price of GATX decreased.

Petitioner now contends that Respondents' failure to disclose their "true purpose" has somehow injured him in violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") notwithstanding the pleaded facts that: (a) Respondents' proposal to acquire GATX was always conditional; (b) Respondents had disclosed in their filings with the SEC that they might withdraw their merger proposal and sell their GATX shares; (c) after Respondents made their $40 per share proposal, two other bidders made offers higher than Respondents' proposal; and (d) Petitioner bought his GATX at a price of $41.50 per share – one dollar and fifty cents per share higher than Respondents' proposed offering price – after the two competing higher offers had been announced. Moreover, nowhere is it alleged that Respondents actually sold – or even attempted to sell – their GATX shares to GATX or anyone else at a profit.

Properly characterized, Petitioner was a rank speculator. He determined that GATX was "in play" and took the risk that someone would acquire GATX for more than his $41.50 per share purchase price. When his speculation did not pay off, Petitioner sought to blame his faulty investment judgment on Respondents by bootstrapping a conditional proposal (at a price lower than Petitioner's own acquisition price) into a false representation that Respondents would consumate a transaction with GATX under all circumstances. As the District Court held, Petitioner simply failed to state a claim for relief under Section 10(b).

Further, both the District Court and the Court of Appeals correctly held that Petitioner failed to plead fraud with the

requisite particularly. The amended complaint did nothing more than set forth speculative and conclusory assertions, based solely on "information and belief," that Respondents never intended to make a *bona fide* offer for GATX, and that Respondents sought only to sell their GATX shares to GATX or a third party for a profit. Petitioner improperly attempted to use the garb of the securities laws without any particularization. Accordingly, the amended complaint was properly dismissed for failure to plead fraud with the particularity required by Fed. R. Civ. P. 9(b). The facts as alleged are briefly set forth as follows.

On January 9, 1986, Respondents filed a Schedule 13D with the SEC (the "Schedule 13D") disclosing that they had acquired approximately 5.3% of GATX's approximately 13 million outstanding common shares. (App. B ¶ 5.) Respondents disclosed in this public filing that from time to time they would evaluate their position and might determine to seek control of GATX. (App. B ¶ 5.)

Significantly, Respondents also disclosed that:

> Depending upon the course of action that [Leucadia] pursue[s], [Leucadia] may attempt to dispose of shares of [its GATX] Common Stock in the open market, in privately negotiated transactions or otherwise.

(App. B ¶ 15.)

Respondents filed an amendment to their Schedule 13D, disclosing that Respondents had sent a letter, dated February 11, 1986, to the Chairman of the Board of GATX proposing a cash merger pursuant to which all GATX shareholders (other than Respondents) would receive $38 per share in cash. (App. B ¶ 22.)

Significantly, Respondents' filing disclosed that their $38 cash merger proposal was conditional:

> . . . consummation of the transaction would be subject to negotiation, preparation and execution of a definitive merger agreement, the requisite regulatory

> approvals, satisfactory completion by Leucadia of diligence (which it would be prepared to commence promptly) and Leucadia's arrangement of requisite financing.

(App. B ¶ 22).

On February 13, GATX publicly announced its rejection of Respondents' $38 per share cash merger proposal. (App. B ¶ 26.)

On or about February 28, 1986, Adler & Shaykin proposed to acquire all outstanding GATX shares (which it did not already own) pursuant to a merger for a price of $40 per share. Respondents' response to the GATX rejection of their $38 merger proposal and Adler & Shaykin's $40 merger proposal was hardly that of one attempting to inflate the market in order to sell off his investment. Respondents neither attempted to sell their shares to GATX, Adler & Shaykin or anyone else, nor did Respondents support the Adler & Shaykin offer. Rather, Respondents determined to compete with Adler & Shaykin, and sent another letter, dated February 28, 1986, to the Chairman of the Board of GATX, this time proposing a cash merger pursuant to which all GATX shareholders (other than Respondents) would receive $40 per share in cash. (App. B ¶ 25.) Respondents publicly disclosed in an amendment to the Schedule 13D that their $40 per share proposal was subject to the same conditions as their $38 per share proposal. (App. B ¶ 26.)

On or about March 1, 1986, Gabelli & Co. proposed a merger with GATX in which all GATX shareholders would receive an unspecified combination of cash and notes to be valued at approximately $42 per share of GATX stock. (App. B ¶¶ 25-26, 29, 30.)[1]

On March 13, 1986, Respondents filed a further amendment to the Schedule 13D, disclosing that they had informed GATX

---

[1] On March 3, 1986, following the announcements of all three merger proposals for GATX described above, Petitioner purchased an unspecified number of GATX shares at a price of $41.50 per share – $1.50 per share more than Respondents' $40 proposal. (App. B ¶ 8.)

on March 12 that their diligence review of GATX had been completed, and they were willing to effect a cash merger pursuant to which GATX shareholders (other than Respondent) would receive $40 per share in cash. (App. B ¶¶ 27-28.)

On or about March 22, 1986, GATX publicly announced that it had accepted Respondents' $40 per share conditional proposal. In announcing its acceptance, GATX expressly acknowledged that Respondents' $40 per share proposal was contingent upon Respondents' ability to obtain adequate financing, the negotiation and execution of a definitive merger agreement, and GATX shareholder approval. (App. B ¶ 30.)

On March 31, 1986, Respondents filed another amendment to the Schedule 13D, disclosing that on March 25, 1986, they had "advised [GATX] that it would require additional time before determining whether to proceed with the transaction and that, because it had become evident on that day that certain additional financing would be required, it requested a seven-day extension until April 1, 1986 of the time by which a definitive merger agreement would have to be entered into." (App. B ¶ 34.) Respondents further disclosed that GATX announced that it would not grant Respondents' request and that the provisions of a standstill agreement between Respondents and GATX restricting Respondents' right to acquire GATX shares would remain effective. (App. B ¶ 34.) At no time does the amended complaint allege that Respondents withdrew the proposal.

Respondents' amendment reiterated their position, which already had been publicly disclosed, that Respondents would "continue to evaluate [their] position in light of [GATX's] response" and that Respondents would consider, *inter alia*, whether to (1) continue to negotiate with GATX for a merger or other business combination on the same or revised terms; (2) acquire additional GATX shares; and (3) dispose of their GATX shares in the open market, in negotiated transactions or otherwise.

Respondents held their GATX shares for several months before disposing of the shares in private transactions and in the market — not to GATX — and did not make a profit. (App. B ¶ 6.)

The District Court dismissed the complaint on the grounds that it failed to state a claim upon which relief could be granted pursuant to Fed. R. Civ. P. 12(b)(6) and that it failed to satisfy the pleading requirements of Fed. R. Civ. P. 9(b) noting that "the complaint fail[ed] to state facts that support its conclusory allegations that Leucadia's intentions to pursue its merger proposal were not genuine." The District Court gave the petitioner leave to amend the complaint if he could allege sufficient facts to support his claim. The amended complaint was dismissed on the same basis as the original complaint and the District Court awarded Respondents costs incurred in moving to dismiss the amended complaint.

The Court of Appeals had "no difficulty agreeing with the court below that [Petitioner's] amended complaint does not pass muster under Rule 9(b)" since the amended complaint's allegations were based entirely on information and belief and contained little more than a "bald allegation" that Leucadia never intended to pursue a merger with GATX. The Court of Appeals, did not consider the District Court's dismissal pursuant to Rule 12(b)(6), and reversed the award of sanctions imposed by the district court.

REASONS FOR DENYING THE WRIT

The decision below correctly applied Rule 9(b) and is consistent with courts in other circuits.

The Court of Appeals' decision correctly interprets Rule 9(b) and is consistent with the decisions of courts in other circuits. Rule 9(b) is designed to prevent wholly unfounded allegations of misconduct that can harm the reputation and goodwill of parties who have done no wrong and are litigated solely for the *in terrorem* effect. The Second Circuit's interpretation of the rule is neither novel nor unusual but rather is consistent with the way Rule 9(b) is applied in other circuits. Accordingly, there is no compelling reason why *certiorari* should be granted here.

It is a well-settled principle of law that Rule 9(b) requires that allegations of fraud must be pleaded with particularity.

See Semegen v. *Weidner*, 780 F.2d 727, 731 (9th Cir. 1985); *Segal* v. *Gordon*, 467 F.2d 602, 607 (2d Cir. 1972); *Robison* v. *Caster* 356 F.2d 924, 925 (7th Cir. 1966); 5 C. Wright and A. Miller, Federal Practice and Procedure § 1297. Mere conclusions or general allegations of fraud are not sufficient. *Shemtob* v. *Shearson, Hammill & Co.*, 448 F.2d 442, 444 (2d. Cir. 1971); *Kellman* v. *ICS, Inc.*, 447 F.2d 1305, 1310 (6th Cir. 1971). *See Decker* v. *Massey-Ferguson, Ltd.*, 681 F.2d 111, 116, 118 (2d Cir. 1982) (allegations that are "simply conclusory rhetoric, [rather than] an 'allegation of facts amounting to deception,' " (quoting *O'Neill* v. *Maytag*, 339 F.2d 764, 768 (2d Cir. 1964)), "fail[ed] to provide an adequate factual substantiation for its accusations and fail[ed] to concretize acceptably the alleged fraud").[2]

As the Court of Appeals in this case correctly observed:

> Fed. R. Civ. P. 9(b) is designed to further three goals: (1) providing a defendant fair notice of plaintiff's claim, to enable preparation of a defense; (2) protecting a defendant from harm to his reputation or goodwill; and (3) reducing the number of strike suits.

Stern v. *Leucadia National Corp.*, 844 F.2d 997, 1003 (2d Cir. 1988). *See also Semegen* v. *Weidner*, 780 F.2d at 731; *Wayne Investment, Inc.* v. *Gulf Oil Corp.*, 739 F.2d 11, 13 (7th Cir. 1984); Wright & Miller § 1296.

The rule ensures that the complaint will set forth all the relevant facts and not serve simply as a fishing expedition to

---

[2] Other circuits have applied Rule 9(b) in a similar manner. *See, e.g., Skycom Corp.* v. *Telstar Corp.*, 813 F.2d 810 (7th Cir. 1987) (claim that defendant never intended to perform contract failed to plead fraud with particularity); *Semegen* v. *Weidner*, 780 F.2d 727 (9th Cir. 1985) ("plaintiffs have done nothing more than set forth conclusory allegations of fraud, conspiracy to commit securities fraud and aiding and abetting in securities fraud punctuated by a handful of neutral facts"); *Kellman* v. *ICS Inc.*, 447 F.2d 1305 (6th Cir. 1971) (failure to specify which statements were false and why); *Duane* v. *Altenburg*, 297 F.2d 515, 518 (7th Cir. 1962) ("allegations of fraud such as are here involved when made on 'information, and belief' must be accompanied by a statement of the facts upon which the belief is founded").

uncover facts. *Friedlander* v. *Nims*, 755 F.2d 810, 813 n.3 (11th Cir. 1985) (rule's "clear intent is to eliminate fraud actions in which all the facts are learned through discovery after the complaint is filed"); *Segal* v. *Gordon*, 467 F.2d 602, 608 (2d Cir. 1972) ("[the complaint] should serve to seek redress for a wrong, not to find one"). *See also Wayne Investment Inc.* v. *Gulf Oil Corp.*, 739 F.2d at 14.

This Court has observed that to the extent meritless claims allow a plaintiff "to simply take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value, rather than a reasonably founded hope that the process will reveal relevant evidence, it is a social cost rather than a benefit." *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 741 (1975). *See also Denny* v. *Barber*, 576 F.2d 465, 470 (2d Cir. 1978).

It is also a well-settled principle that allegations of fraud based upon information and belief do not satisfy Rule 9(b)'s pleading requirements. *Di Vittorio* v. *Equidyne Extractive Industries, Inc.*, 822 F.2d 1242, 1247 (2d Cir. 1987); *Wool* v. *Tandem Computers Inc.*, 818 F.2d 1433, 1439 (9th Cir. 1987); *Hayduk* v. *Lanna*, 775 F.2d 441, 444 (1st Cir. 1985). While fraud allegations may be so pleaded as to facts peculiarly within the opposing party's knowledge, such allegations must be accompanied by a statement of facts upon which the belief is founded. *Wool* v. *Tandem Computers Inc.*, 818 F.2d at 1439; *Hayduk* v. *Lanna*, 775 F.2d at 444; *Denny* v. *Barber*, 576 F.2d 465, 470 (2d Cir. 1978) (Friendly, J.); *Duane* v. *Altenburg*, 297 F.2d 515, 518 (7th Cir. 1962); *Elster* v. *Alexander*, 75 F.R.D. 458, 461 (N.D. Ga. 1977); *Arpet, Ltd.* v. *Homans*, 390 F. Supp. 908, 912-13 (W.D. Pa. 1975); 2A J. Moore & J. Lucas, Moore's Federal Practice ¶ 9.03[3] (2d ed. 1987); 5 C. Wright & A. Miller, Federal Practice and Procedure § 1298 (1969). As Judge Friendly stated in *Denny* v. *Barber*:

> Recognizing the difficulties encountered by a small stockholder in framing a Rule 10b-5 complaint against a large corporation which has not been the subject

> of a publicized official investigation and the consequent need, noted in *Schlick*, for relaxing the requirement that allegations of fraud should be based on something more than information and belief, *there still must be more than vague allegations* [of misconduct].

Denny v. *Barber*, 576 F.2d 464, 470 (2d Cir. 1978) (emphasis added).

The amended complaint in this action, based solely upon information and belief, failed to state any facts indicating any fraud by Respondents, let alone any facts upon which Petitioner's belief that a fraud occurred could be founded. Petitioner failed to state anything but conclusory allegations that Respondents intentionally omitted from their Schedule 13D and amendments their "true" motive in acquiring GATX stock and that their "true" motive was not to make a *bona fide* bid for GATX, but rather to inflate the price of GATX stock to enable it to sell its GATX stock or to induce another entity to make a bid above market price for GATX. Petitioner merely contradicted the full and complete disclosures by Respondents without offering a single fact on which the contradiction is based.

Indeed, Petitioner's Petition for a Writ of Certiorari still fails to identify any facts which support the conclusory assertion that Respondents' purpose was other than that which they disclosed. Moreover, notwithstanding Petitioner's perjorative allegations that Respondents are "greenmailers" and that their "true purpose" was to "greenmail" GATX, nowhere did Petitioner allege (1) that Respondents withdrew their merger proposal or (2) that Respondents sought from GATX, let alone discussed with GATX, the repurchase of their shares by GATX.

In an unsuccessful effort to buttress his bald assertions, Petitioner alleged, without a single supporting fact to contradict the legitimacy of Respondents' need for additional financing, that Respondents' "claim that [it] suddenly discovered that the date on which some of GATX's debt would have to be paid would

be accelerated if GATX were merged into another company . . . was merely a pretext because Leucadia had long been in possession of all of GATX's debt documents and the alleged information suddenly discovered by Leucadia was not new or unusual." (App. B ¶ 31.) Petitioner also weakly relies on GATX's explanation for rejecting Respondents' request for an extension of time as the basis for inferring that Respondents did not intend to proceed with the transaction had GATX granted their request. The Court of Appeals correctly rejected these assertions as insufficient to comply with Rule 9(b)'s particularity requirement as Respondents' proposal was at all times conditioned on numerous contingencies, including obtaining financing, and Respondents had disclosed at all times that, among other possibilities, they might sell their GATX shares.

By suggesting that the Second Circuit requires evidentiary pleadings in order to satisfy the requirements of Rule 9(b), Petitioner mischaracterizes the decision below as misreading Rule 9(b) and inconsistent with the interpretations of the Rule by courts in other circuits. The Second Circuit, as do other circuits, however, require that conclusory allegations that a defendant's conduct was fraudulent, "punctuated by a handful of neutral facts," are insufficient and that allegations of fraud, based upon information and belief, must be accompanied by a statement setting forth the facts upon which the belief is founded. *E.g.*, *Semegen* v. *Weidner*, 780 F.2d 727, 731 (9th Cir. 1985); *Hayduk* v. *Lanna*, 775 F.2d 441, 444 (1st Cir. 1985); *Wayne Investment, Inc.* v. *Gulf Oil Corp.*, 739 F.2d 11, 14 (1st Cir. 1984); *Walling* v. *Beverly Enterprises*, 476 F.2d 393, 397 (9th Cir. 1973); *Shemtob* v. *Shearson, Hammill & Co.*, 448 F.2d 442, 444 (2d Cir. 1971); *Duane* v. *Aitenburg*, 297 F.2d 515, 518 (7th Cir. 1962).

Petitioner has failed to meet these well-settled standards of pleading. Indeed, Petitioner's insistence that he requires discovery before he can comply with the requirements of Rule 9(b) (Petition for Writ at 3-4) is precisely the kind of strike suit strategy that Rule 9(b) was designed to avoid. In short, the amended complaint here amounts to nothing more than the kind of expeditionary pleading which concerned this Court in *Blue*

Chip Stamps v. *Manor Drug Stores*, 421 U.S. 723 (1975), where Justice Rehnquist observed:

> [a securities law] complaint which by objective standards may have very little chance of success at trial has a settlement value to the plaintiff out of any proportion to its prospect of success at trial so long as he may prevent the suit from being resolved against him by dismissal or summary judgment.

Id. at 740. *See also Decker* v. *Massey-Ferguson Ltd.*, 681 F.2d at 114 (citing Justice Rehnquist's statement with approval).

The Court of Appeals, therefore, properly dismissed Petitioner's "expeditionary" amended complaint for failure to meet Rule 9(b)'s specificity requirement.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

DENNIS J. BLOCK
WEIL, GOTSHAL & MANGES
Attorneys for Respondents
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

APPENDIX

Pursuant to Rule 28.1, the parents, subsidiaries (except wholly-owned subsidiaries) or affiliates of Respondents are set forth below:

Respondent	Parent	Subsidiary or Affiliate
Leucadia National Corporation	Uintah National Corporation	BRAE Corp., American Investment Corp. PHLCORP, Inc.
LNC Investments, Inc.	Leucadia, Inc.	PHLCORP, Inc.
Charter National Life Insurance Company	Leucadia National Corporation	– –
American Investment Company	Leucadia National Corporation	– –
Leucadia Inc.	Leucadia National Corporation	– –
Uintah National Corp.	TLC Associates	Leucadia National Corporation
TLC Associates	– –	– –
Cumberg, Inc.	– –	– –
Marks Investing Corp.	Leucadia National Corporation	– –
S&S Securities Corp. (merged into its parent, Stern & Stern Industries, Inc., formerly Stern & Stern Huguet Textiles, Inc.)	– –	– –